

From: J. David Eisenberg
To: Microsoft ATR
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Subject: Microsoft Settlement

I believe the proposed settlement is a bad idea for the following reasons:

1) Although Microsoft may not alter its commercial relationship with an OEM for shipping a competitive product, they may provide "Consideration to any OEM with respect to any Microsoft product or service where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service." What, then, prevents Microsoft from determining that an OEM who works only with Microsoft products may get a very large rebate for every system shipped, but that OEMs who use competitive products get no rebate, as their promotion is certainly not the at the same level? Effectively, this creates a mechanism whereby Microsoft can still financially punish any OEM that ships competitive software.

2) There seems to be no explicit listing of actual consequences for violation of any of the agreement, other than "the plaintiffs will investigate this behavior."

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